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Educational Financing Mandates in California: Reallocating the Cost of Educating Immigrants Between State and Local Governmental Entities

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EDUCATIONAL FINANCING MANDATES IN CALIFORNIA: REALLOCATING THE COST OF EDUCATING IMMIGRANTS BETWEEN STATE AND LOCAL GOVERNMENTAL ENTITIES

I. INTRODUCTION

Perhaps no two public policy issues have generated more public debate in recent years than immigration and education.[1] Following the arrival of nine million immigrants in the United States during the 1980's,[2] another 8.9 million immigrants were admitted during the first four years of the 1990's.[3] The immigrants' impact on employment opportunities and the economy,[4] on public revenues and expenditures,[5] on cultural values and racial divisions,[6] has been the subject of much dispute. One link between these issues has been the controversy over the societal role of education and the burdens immigration places on educational financing.[7] For ex-

1. *See generally* JULIAN L. SIMON, THE ECONOMIC CONSEQUENCES OF IMMIGRATION (1989); STANLEY ARONOWITZ & HENRY GIROUX, EDUCATION UNDER SIEGE: THE CONSERVATIVE, LIBERAL, AND RADICAL DEBATE OVER SCHOOLING (1985).

2. Daniel B. Wood, *Confronting California's Immigration Issue*, THE CHRISTIAN SCIENCE MONITOR, Oct. 4, 1993, at 12; *see* LORRAINE M. MCDONNELL & PAUL T. HILL, NEWCOMERS IN AMERICAN SCHOOLS: MEETING THE EDUCATIONAL NEEDS OF IMMIGRANT YOUTH at ix (1993).

3. Robert Reinhold, *A Welcome for Immigrants Turns to Resentment*, N.Y. TIMES, Aug. 25, 1993, at A1.

4. A July 1993 Gallup poll showed that 27% of respondents indicated that immigration should stop until the economy improves. Wood, *supra* note 2, at 12. However, studies have suggested that job losses are the result of trade deficits and manufacturers moving overseas rather than of immigration. GEORGE BORJAS ET AL., ON THE LABOR MARKET EFFECTS OF IMMIGRATION AND TRADE 5 (1991).

5. A Rice University study shows that, since 1970, immigrants have cost governmental entities $45 billion per year more than they have paid in taxes. Wood, *supra* note 2, at 12. Yet critics point out that other studies indicate immigrants contribute more money in taxes than they receive in government benefits. Frank Trejo, *Hispanic Officials, Organizers Meet to Fight Anti-Immigrant Views*, DALLAS MORNING NEWS, Jan. 9, 1994, at A6.

6. *See* Suzanne Espinosa & Benjamin Pimentel, *Backlash Against Asians, Latinos*, S.F. CHRON., Aug. 27, 1993, at A1; Judy MacLean, *Is Immigration the Problem?*, S.F. CHRON., Aug. 26, 1993, at A25.

7. *See* Daniel M. Weintraub & Ralph Frammolino, *Wilson to Call for College Fee Hikes*, L.A. TIMES, Jan. 7, 1994, at A1; *California Politicos Seek to Curb*

ample, with the overburdened metropolitan school districts of New York, Los Angeles, Chicago, and Miami enrolling nearly 100,000 new students each year who are immigrants or the children of immigrants,[8] an issue has arisen concerning the districts' capacity to accommodate the needs of society in general and students in particular.[9] In an age of budget constraints,[10] these districts are confronted with additional obstacles to providing students a basic education.

The concern with the effects of immigration has been especially prominent in California, which grew in population by 6.1 million during the 1980's (thirty-seven percent of that growth attributable to immigration) and, in the years since 1989, has received an additional influx of 3.2 million legal immigrants.[11] In particular, political issues include the state's ability to educate its citizens,[12] the fiscal requirements of maintaining a public education system during an economic recession, the costs associated with including the children of immigrants within such a system, and the role of the federal government with regard to illegal immigration and education funding.[13] Despite the wide breadth of these topics, however, there has been little discussion of the legal structure which provides the underlying basis for any governmental role in the resolution of these matters, or of the existing legal relationships between governmental entities whose functions include implementation of federal and state mandates regarding these issues. In short, where political questions exist,

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Illegal Immigration, National Public Radio, May 17, 1993, available in LEXIS, Nexis Library, NPR File.

8. 1 IRIS C. ROTBERG, RAND INSTITUTE ON EDUCATION AND TRAINING, FEDERAL POLICY OPTIONS FOR IMPROVING THE EDUCATION OF LOW-INCOME STUDENTS 7 (1993).

9. *See, e.g.*, Thomas J. Lueck, *Immigrant Enrollment Rises in New York City Schools*, N.Y. TIMES, Apr. 16, 1993, at B1.

10. A lobbyist for the Los Angeles Unified School District recently stated that the District had not received cost-of-living increases for three years. Weintraub & Frammolino, *supra* note 2. Big-city school districts across the country face fiscal deficits, facility overcrowding and teacher shortages. MCDONNELL & HILL, *supra* note 2, at xiii.

11. Reinhold, *supra* note 3.

12. MICHAEL A. SHIRES, ET AL., RAND INSTITUTE ON EDUCATION AND TRAINING, THE EFFECTS OF THE CALIFORNIA VOUCHER INITIATIVE ON PUBLIC EXPENDITURES FOR EDUCATION at xi (1993).

13. *See* Weintraub & Frammolino, *supra* note 7.

concomitant legal issues must be addressed—and resolved—according to the rule of law.[14]

To paraphrase Chief Justice Marshall, certain duties of government are assigned by law.[15] When an injury results from a failure to perform an assigned duty, the injured party has a right to resort to the law for a remedy.[16] Cognizant of these principles, this comment examines the duties of the California Legislature with regard to local school districts. Such duties result from a myriad of state laws and state and federal constitutional mandates;[17] where those duties arguably have not been met, California school districts face a serious legal predicament.

The United States Supreme Court has set forth certain constitutional mandates regarding state administration of educational opportunity. In *Plyler v. Doe*,[18] the Court held that state statutes which withhold state funds from local school districts for the education of children not "legally admitted"[19] to the United States violated the Equal Protection Clause of the Fourteenth Amendment.[20] As a result, under the federalist system, state governments have an obligation to extend education rights afforded to U.S. citizens who reside within the state to all state residents regardless of their status under the immigration laws.[21] Faced with a federal mandate to provide basic education to an increasing number of students, including nearly forty-five percent of the nation's immigrant children,[22] California has had difficulty in financing its schools.[23]

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14. *See* Baker v. Carr, 369 U.S. 186 (1962). One element of the political question doctrine, which bars adjudication of a matter, may be found where there are no "judicially discoverable and manageable standards." *Id.* at 189. Here, as in *Baker*, a body of law consisting of past precedents may be used to adjudicate a matter which, since it involves judicial review of legislative action, arguably involves a political question.

15. Marbury v. Madison, 5 U.S. 137, 138 (1803).

16. *Id.*

17. *See* discussion *infra* part II.

18. 457 U.S. 202 (1982).

19. *Id.* at 205.

20. *Id.* at 230. The Equal Protection Clause provides: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

21. *Plyler*, 457 U.S. at 230.

22. MCDONNELL & HILL, *supra* note 2, at 4.

23. *See id.* at 55.

There are also state constitutional requirements that the California Legislature provide a basic education to California's children. According to *Serrano v. Priest (Serrano II)*,[24] basic education is regarded as a fundamental right.[25] Further, *Serrano* held that the Legislature may not condition educational opportunity on the taxable wealth of school districts.[26] In summary, a Californian has a right to a basic education,[27] and the Legislature has a constitutional duty to provide one.[28] That duty is reinforced by section 6 of Article XIII B of the California Constitution, which provides that "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs . . . ."[29] Despite these constitutional obligations, the burden of financing education has increasingly fallen on local school districts, especially on those with ever-expanding student enrollments.[30] Thus, the legal problem this comment proposes to resolve involves a remedy for school districts which must bear an unfair burden of the state's obligation to provide children with a basic education.[31] Specifically, this comment argues that school districts which have had to accommodate a high influx of students—while receiving only minimal increased support from the state—are entitled to reimbursement from the state for those increased costs.[32]

This comment provides constitutional analysis of the federal and state mandates applicable to California's school districts.[33] It also analyzes California electoral and statutory

24. 557 P.2d 929 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977).

25. *Id.* at 951 (stating that under "state constitutional provisions guaranteeing equal protection of the laws . . . education is a fundamental interest").

26. *Id.* at 953.

27. Hayes v. Commission on State Mandates, 15 Cal. Rptr. 2d 547 (Ct. App. 1992).

28. CAL. CONST. art. IX, § 5.

29. CAL. CONST. art. XIII B, § 6.

30. *See* MCDONNELL & HILL, *supra* note 2, at xii.

31. *See generally* Note, *Unfulfilled Promises: School Finance Remedies and State Courts*, 104 HARV. L. REV. 1072 (1991) (describing how the remedial phase of state court decisions requiring equal educational opportunity have been hindered by state political conditions).

32. *See* discussion *infra* part IV.

33. *See* discussion *infra* parts II.B., II.C.1.

law pertaining to the implementation of those mandates.[34] After suggesting a legal method for local school districts to obtain relief from the state legislature, the comment considers whether, against the applicable common law criteria, such relief would be judicially granted.[35]

II. BACKGROUND

A. *The Fiscal and Material Circumstances of California School Districts*

On a national scale, the fiscal constraints imposed on local school districts can best be traced statistically. Since 1981, the federal government's share of public education financing has decreased from ten percent to six percent.[36] Meanwhile, over the last decade, public school enrollments have increased approximately 1.5% each year nationwide.[37] More than two million of those enrolled were immigrant youth,[38] a figure which constitutes at least three percent of all American youth under age eighteen.[39] While immigrant children thus represent only a small fraction of the nation's youth, over seventy percent of our nation's immigrant youth reside in just five states,[40] the majority having settled in California.[41]

The debate which ensued following Governor Pete Wilson's proposal to amend the California Constitution to deny citizenship to the children of illegal aliens and to cut off health and education benefits to undocumented immigrants has included exchanges of factual data of nearly every kind from all sides of the issue.[42] Almost universally, the arguments include attempts to assign blame for the fiscal crises faced by state governmental entities.[43] The extent to which

34. *See* discussion *infra* part II.C.2.

35. *See* discussion *infra* parts III., IV.

36. Michael Winerip, *Two Suburbs, a School Tax and Two Attitudes About It*, N.Y. TIMES, Aug. 25, 1993, at A13.

37. *Id.*

38. MCDONNELL & HILL, *supra* note 2, at 3.

39. *Id.* at 3.

40. *Id.* at 2 (including California, Florida, Illinois, New York, and Texas).

41. *Id.*

42. *See* Susan Estrich, *The Curse of Specificity—Or Why Politicians Tell Lies*, L.A. TIMES, Sept. 5, 1993, at M2; Reinhold, *supra* note 3, at A1; Wood, *supra* note 2, at 12.

43. *See generally Estrich*, *supra* note 42, at M2; Reinhold, *supra* note 3, at A1; Wood, *supra* note 2, at 12.

these crises are real can be demonstrated by examining local school districts.

In Los Angeles, approximately one-fifth of the school population is foreign-born.[44] The recent influx of students from foreign countries accounted for twenty-three percent of school spending.[45] Yet despite increased enrollments, funding for Los Angeles schools fell nearly twenty percent between September 1990 and January 1992,[46] leaving the district "near collapse."[47] Pupil-teacher ratios have increased and essential services, as well as repair and maintenance activity, have been cut.[48] According to a recent study, the district is "profoundly troubled and . . . finding it difficult to provide sound educational experiences to any of [its] students."[49] Moreover, the budget crisis, overcrowding, and a shortage of bilingual staff constrain the district's efforts to educate recent immigrants.[50]

Similar funding-service disparities have occurred elsewhere in California, including the Bay Area. While Los Gatos schools decreased their pupil-teacher ratios and enhanced services as a result of a local property tax initiative, budget cuts have eliminated faculty, music teachers, librarians, busing, after-school sports, and increased class size in many of the area's largest school districts.[51] Yet to the extent that significant per-pupil funding disparities exist between state school districts, state constitutional questions of equal protection emerge.[52] To understand the federal scheme under which California's school financing process must operate, however, the role of the federal government must first be explored.

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44. McDONNELL & HILL, *supra* note 2, at 3.

45. Reinhold, *supra* note 3.

46. McDONNELL & HILL, *supra* note 2, at 51.

47. *See Schools for Immigrants*, SACRAMENTO BEE, Aug. 16, 1993, at B14.

48. *Id.*

49. McDONNELL & HILL, *supra* note 2, at 54.

50. *Id.* at 55.

51. Aleta Payne, *Los Gatos' Parcel Tax Has Kept Schools at the Head of the Class*, SAN JOSE MERCURY NEWS, Sept. 5, 1993, at A1, A18.

52. This question remains entirely open following the depublication of Serrano III. *See* Serrano v. Priest (Serrano III), 226 Cal. Rptr. 584 (Ct. App. 1986), *vacated and review granted sub nom.* Placentia Unified School Dist. v. Riles, 723 P.2d 1248 (Cal. 1986) (en banc), *transferred sub nom.* Serrano v. Priest, 763 P.2d 852 (Cal. 1988).

B. *The Federal Equal Protection Mandate Pertaining to Education*

As indicated above,[53] the United States Supreme Court, in *Plyler*, examined the constitutionality of a statutory classification used to allocate resources to local school districts.[54] The factual context of the examination was whether the state's failure to reimburse local school boards for the costs of educating children who were unable to demonstrate the legality of their presence in the United States (or the school board's imposition of tuition on those children) violated the Equal Protection Clause.[55] Although the Court recognized that education is not a fundamental right and that undocumented aliens could not be treated as a suspect class,[56] the court found that the classification warranted intermediate scrutiny[57] because the statute injured a discrete class of children not responsible for their own legal status.[58]

In determining the level of review to be applied, the Court distinguished education from all other forms of governmental "benefit[s]."[59] The constituent elements of the distinction included the "importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child."[60] The majority supported this assessment at length, citing case precedents, which recognized the vital role public education plays in preserving our democratic system of government by transmitting knowledge

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53. *See supra* text accompanying notes 18-20.

54. Plyler v. Doe, 457 U.S. 202, 227 (1982); *see also* Julie K. Underwood & William E. Sparkman, *School Finance Litigation: A New Wave of Reform*, 14 HARV. J.L. & PUB. POL'Y 517, 527.

55. *Plyler*, 457 U.S. at 215.

56. *Id.* at 223 (citing San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28-39 (1973)). Despite the fact that the Rodriguez Court found no right to education under the Constitution, the Court "noted that 'some identifiable quantum of education' might be required." Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1, 33 (footnote omitted).

57. The United States Supreme Court applies three levels of scrutiny in evaluating state action against the constraints of the Fourteenth Amendment's guarantee of "equal protection of the laws": rationality review (lowest level), heightened, or intermediate scrutiny (middle level), and strict scrutiny (highest level). *See generally* GERALD GUNTHER, CONSTITUTIONAL LAW 601-08 (12th ed., 1991).

58. *Plyler*, 457 U.S. at 223-24.

59. Plyler v. Doe, 457 U.S. 202, 221 (1982).

60. *Id.*

essential to useful participation in civic affairs, and by cultivating the fundamental values necessary to maintain that system.[61] The majority also acknowledged the importance of education in providing persons with the basic tools to lead economically productive lives, a benefit to society as well as to the individual.[62] Deprivation of these tools, the Court concluded, takes an "inestimable toll" on the "social, economic, intellectual, and psychological well-being of the individual."[63]

In addition to measuring the individual and institutional moment of education, the Court weighed another societal value in reaching its determination by characterizing education in terms of the Equal Protection Clause.[64] Because one of the objectives of the Clause was "the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit,"[65] the Court reasoned that denial of education to an isolated group would contravene one of the purposes underlying the adoption of the Clause.[66] More particular to the classification at issue, the children of a disfavored group would be deprived of the means necessary to "raise the level of esteem in which [the group] is held by the majority."[67] Thus, one practical value of education, the Court seemed to say, is the functional equivalent of that envisioned for the Equal Protection Clause: to afford a remedy for persons treated unfairly by circumstances beyond their control. A law which impedes a child's

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61. *Id.* at 222-23. As additional support for its holding, the Court cited Brown v. Board of Educ., 347 U.S. 483, 493 (1954).

> Today, education is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. . . . [I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Plyler, 457 U.S. at 222-23.

62. *Id.* at 221.

63. *Id.* at 222.

64. Plyler v. Doe, 457 U.S. 202, 221-22 (1982).

65. *See id.* at 221-22.

66. *Id.*

67. *Id.*

ability to obtain an education inherently conflicts with the Equal Protection Clause.[68]

As demonstrated above, the Court accounted for the individual and societal costs of denying children, on the basis of their legal status, a basic education.[69] The extent of these costs, the opinion concludes, was such that the discriminatory classification could not be considered rational unless it furthered some substantial state goal.[70] The opinion held that the evidence did not support a finding that the classification advanced a substantial state interest.[71] Neither the interests of avoiding the harsh economic effects of illegal immigration, providing a high quality education to citizens and legal residents, nor providing education only to children likely to remain within the state after receiving an education were found to be advanced in a significant way.[72] Indicating that the classification simply bore no more than a tenuous factual relationship to the ends named by the State, the opinion states: "Whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation."[73]

While *Plyler* clearly requires state governments to extend education rights without regard to a child's status under the immigration laws, a line of cases beginning with *San Antonio Independent School District v. Rodriguez*[74] limits the standard of federal equal protection review of school financing formulae to mere rationality.[75] In effect, funding disparities are constitutionally justified by a showing that they are rationally related to a legitimate state interest (usually local control of the schools) while absolute educational depriva-

68. *See id.* at 226. Justice Brennan's opinion emphasizes the "special constitutional sensitivity" required in examining the status of children "present in this country through no fault of their own." *Id.*

69. Plyler v. Doe, 457 U.S. 202, 224 (1982).

70. *Id.*

71. *Id* at 230.

72. *Id.* at 228-30 (note that the Court explicitly assumed the legitimacy of the state's purported interest in singling out students likely to remain within the state's borders in order to analyze the ends-means relationship).

73. *Id.* at 230.

74. 411 U.S. 1 (1973).

75. Underwood & Sparkman, *supra* note 54, at 521.

tion, at least in the "unique circumstances"[76] of *Plyler*, must be justified against heightened equal protection review.[77]

Ordinarily, neither strict scrutiny nor intermediate scrutiny apply to federal equal protection claims against public school financing systems due to the lack of suspect classification or fundamental interest.[78] According to *San Antonio*, wealth classifications, by themselves, do not constitute a suspect class.[79] Moreover, were wealth considered suspect, classification by school district wealth, as opposed to individual wealth, would not meet the criteria established to define suspect classifications: isolation, immutable characteristics, and political powerlessness.[80] There is no fundamental interest in education, the Court held, because the interest was neither "explicitly" nor "implicitly" protected under the Constitution.[81] Thus, in the absence of a suspect class or a fundamental right, and notwithstanding the "unique circumstances" of *Plyler*, rationality review will apply.[82]

The scope of the above standard, however, remains at issue. Despite the application of the lowest level of equal protection review, the holding in *Papasan v. Allain*[83] indicates that a challenged school financing formula will not be automatically upheld. In *Papasan*, the Court recognized that *San Antonio* did not "purport to validate all funding variations that might result from a State's public school funding decision."[84] The rationality of statutory-based funding disparities is a factual determination,[85] a determination not reached by the Court in *Papasan* because the lower courts had not adjudicated the issue.[86]

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76. "We have not extended [the *Plyler*] holding beyond the 'unique circumstances,' that provoked its 'unique confluence of theories and rationales.'" Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450, 459 (1988) (footnotes omitted).

77. *See* Edelman, *supra* note 56, at 39; Underwood & Sparkman, *supra* note 53, at 521-22.

78. *San Antonio*, 411 U.S.at 33-34, 61-62.

79. *See* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973).

80. *See id.*

81. *Id.* at 35.

82. *See* Kadrmas v. Dickinson Pub. Sch., 487 U.S. 450, 458-59 (1988); Underwood & Sparkman, *supra* note 54, at 523.

83. 478 U.S. 265 (1986).

84. Underwood & Sparkman, *supra* note 54, at 524 (citing *Papasan*, 478 U.S. at 287).

85. *Id.*

86. *Id.*

Yet, the Court concluded that the factual differences between the challenge brought in *Papasan* and that brought in *San Antonio* provided a sufficient basis for the plaintiff in *Papasan* to allege an equal protection violation.[87] It is thus useful to note that the challenge brought in *San Antonio* involved an attack on the overall system of state school finance by implicating that system in an unfair distribution of funds raised through local property taxes, while *Papasan* merely challenged certain disparities resulting from the state's method of compensating school districts for lost revenues.[88] Although courts now apply the rational-basis test to evaluate federal equal protection claims based on funding inequities between poor and wealthy districts, the question remains, given the language of *Papasan*, whether courts will continue to "accept local control of public education as a legitimate state purpose."[89] Posed in Justice White's dissenting opinion in *San Antonio*, the question turns on whether districts "with a low per-pupil . . . tax base" are afforded a "realistic choice" in means to raise per-pupil expenditures in order to reach educational objectives.[90] As discussed below,[91] this question was raised and briefly considered by the California Supreme Court when it resolved in a dissimilar fashion a state claim that funding inequities violated equal protection principles.

C. *School Financing Requirements in California*

1. *State Equal Protection*

In the wake of *San Antonio v. Rodriguez*, the California Supreme Court held in *Serrano v. Priest (Serrano II)*[92] that, for the purposes of determining compliance with state equal protection provisions, the state public school financing system would be subjected to strict judicial scrutiny.[93] The court previously had determined, on adequate and independent

87. *Id.* (citing *Papasan*, 478 U.S. at 287-89).

88. Even under federal equal protection analysis, which is clearly more deferential to state legislation than is equal protection analysis conducted under the California Constitution, such litigation can be brought. *Id.*

89. *Id.* at 525.

90. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 64-65 (1973) (White, J. dissenting).

91. *See* discussion *infra* part II.C.

92. 557 P.2d 929 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977).

93. *Id.* at 952.

state grounds, that education is a state fundamental right, and that "discrimination in educational opportunity on the basis of district wealth involves a suspect classification."[94] Although the state's equal protection guarantees were "substantially the equivalent of" those in the Federal Constitution, the "independent vitality" of California law, in the absence of judicial constraints imposed by federalism, (notably deference accorded to a state legislature by the federal court of last resort regarding local matters for lack of expertise in those matters), demanded a different analysis of education as a state constitutional right.[95] Because of the "distinctive and priceless function of education in . . . society," and because "education is essential to a free enterprise democracy, is universally relevant . . . [and] is so important that [California] made it compulsory," the court treated education as a fundamental right.[96]

Under state equal protection analysis, the existing public school financing system, having been shown to allocate educational opportunity to students on the basis of the taxable wealth of the district in which they lived, was held unconstitutional because it denied equal protection of the laws in violation of the California Constitution.[97] Since the state financing system could not be supported by other constitutional provisions, the system was invalidated.[98] Despite the application of the "strict scrutiny" standard whereby the government must meet the burden of showing that the means are necessary to achieve a compelling public purpose, the court expressed doubt that even a rational relationship could be shown between the asserted "end of maximizing local initiative and a system which provides realistic options to exercise such initiative only in proportion to district wealth . . . ."[99] Essentially, this observation reflected the court's earlier pronouncement that the availability of local tax measures to

94. *See id.* at 949-51 (upholding Serrano v. Priest (Serrano I), 487 P.2d 1241 (Cal. 1971), which determined that district wealth classifications are suspect and education is a fundamental interest).

95. *Id.* at 950, 952.

96. *Serrano I*, 487 P.2d 1241, 1258.

97. Serrano v. Priest (Serrano II), 557 P.2d 929, 953, 957-58 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977).

98. *Id.* at 958.

99. *Id.* at 953 n.49 (citing Justice White's dissenting opinion in San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 63-70 (1972), for comparison).

meet educational objectives was a "cruel illusion"[100] for poor school districts, inherently unable to pass such measures.

The central holding of *Serrano*, that education is a fundamental interest under state equal protection principles and "denials of basic educational equality on the basis of district residence are subject to strict scrutiny," has been recently reaffirmed by the California Supreme Court in *Butt v. State of California*.[101]

In *Butt*, the resident children of the Richmond Unified School District were to have been deprived of six weeks, or almost one-fifth, of the standard 175 day California school term in accordance with a school closure plan.[102] The planned closure was the school district's response to its impending fiscal insolvency and its inability to obtain emergency aid from the State.[103] At trial, the court had found that the State, since it has plenary constitutional responsibility for the operation of the common school system, had a duty to intervene to protect students' rights to basic education.[104] The Supreme Court of California affirmed the existence of that duty, stating that the "State is obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason" for not doing so.[105]

2. *The Electoral Propositions*

Following the *Serrano I* and *II* litigation, the enactment of Proposition 13 in 1978 forced the California Legislature to assume greater responsibility for financing education.[106] By limiting the taxes which can be imposed on real property to one percent of full market value,[107] the measure induced the Legislature to enact new, centralized statutory formulae in educational financing.[108] The formulae allocated to local governments revenue earned from a uniform, drastically re-

100. *Id.* (citing Serrano v. Priest (Serrano I), 487 P.2d 1241 (Cal. 1971)).
101. 842 P.2d 1240, 1256 (Cal. 1992).
102. *Id.* at 1252.
103. *Id.* at 1253.
104. *Id.*
105. *Id.* at 1256.
106. Joseph T. Henke, *Financing Public Schools in California: The Aftermath of* Serrano v. Priest *and Proposition 13*, 21 U.S.F. L. REV. 1, 2 (1986).
107. CAL. CONST. art. XIII A.
108. *See* Henke, *supra* note 106 at 1; CAL. EDUC. CODE § 41060 (West 1990).

duced, statewide property tax, with school districts receiving funds based on their past budgets.[109] Gradually, the state legislature moved to equalize per student expenditures among school districts.[110] Today, the rights of school districts to raise local revenue are limited to such supplemental measures as student fees, special taxes, sale or lease of school property, intergovernmental transfers, and charitable donations.[111]

These rights, limited though they may be in a legal sense,[112] have been drained of practical vitality. Although the rights of local districts to raise local revenue were created to supplement existing state obligations,[113] the State has supplanted those obligations by appropriating funds otherwise available to support local measures.[114] For his 1992-93 budget, Governor Wilson shifted $1.3 billion in local property tax revenues from local governments to school and community college districts.[115] For the 1993-94 budget, "a 2.6 billion dollar permanent shift in local revenues from local governments to K-12 school districts and community colleges" has been projected.[116] The shifts did not increase available funds to school districts; rather, they reduced the state General Fund contributions to the districts.[117] The consequence of the diversion of local funds for state expenditures is a decrease in local ability to tax for supplemental purposes. In short, local governmental agencies must raise taxes to continue providing the same local services or cut services to reflect current local revenue.

In 1979, California voters passed Proposition 4, thereby adding Article XIII B to the state constitution.[118] Imposing spending limits on all local governments, the measure limits annual appropriations increases to those made necessary by changes in the cost of living and population growth. Population growth is to be determined by any means chosen by the

109. Henke, *supra* note 106, at 23 (footnote omitted).
110. *Id.*
111. *Id.* at 24.
112. Available supplemental revenue is "minuscule" in comparison to funding provided by the state education budget. *See id.* at 35.
113. *See id.* at 24.
114. SHIRES et al., *supra* note 12, at 63-65.
115. *Id.* at 63.
116. *Id.* at 65.
117. *Id.* at 63.
118. CAL. CONST. art. XIII B, § 1.

Legislature which reflects the federal census and, in special circumstances, by city and county agency assessments of employment activity.[119] Revenues obtained by local governmental entities in excess of appropriations limits were to be returned to taxpayers.[120]

Illustrating the centralized nature of California's educational financing scheme, Proposition 98, adopted in 1988, amended Article XIII B to transfer half of any excess revenue to the state school fund for the support of school and community college districts.[121] The provisions of Proposition 98 also constitute the framework of education finance in California.[122] Setting a baseline level of funding outlays from the State, Proposition 98 permits the State to spend less than the baseline during bad economic times.[123]

3. *The Fiscal Relationships Between State and Local Governmental Bodies*

Section 6 of Article XIII B of the California Constitution directs that "[w]henever the Legislature or any State Agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service."[124] While reimbursement as a general principle is easily stated, the application of XIII B involves certain difficulties,[125] difficulties exacerbated by the legal complexities of education funding.[126]

In *City of Sacramento v. State*,[127] the California Supreme Court delineated the scope of the subvention requirement by examining the purpose of XIII B's adoption. The intent of the provision, the court found, was to prevent the State from transferring the costs of government from itself to local agen-

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119. *Id.*

120. *See* CAL. CONST. art. XIII B, § 2.

121. *See id.* art. XVI, § 8.5; *see also id.* art. XIII B, § 2; California Teachers Ass'n. v. Huff, 7 Cal. Rptr. 2d 699, 701 (Ct. App. 1992).

122. SHIRES ET AL., *supra* note 12, at 9 n.10.

123. *Id.* at 71; CAL. CONST. art. XVI, § 8(b).

124. CAL. CONST. art. XIII B, § 6.

125. Hayes v. Comm'n on State Mandates, 15 Cal. Rptr. 2d 547, 555, (Ct. App. 1992).

126. One court described the California system of financing its public educational system as "Byzantine in its intricacy and complexity." *Huff*, 7 Cal. Rptr. 2d at 707.

127. 785 P.2d 522 (Cal. 1990).

cies.[128] Local governmental entities required protection because their taxing and spending powers were restricted.[129] The court found that no reimbursement of local agencies is required for incidental costs resulting from the enactment of a state law.[130] Rather, local agencies may be entitled to subvention only where state law requires them to provide governmental services to residents.[131] When the State "freely chooses to impose on local agencies any peculiarly 'governmental' cost which they were not previously required to absorb," reimbursement is required.[132] Thus, where a federal mandate leaves the state free to choose the fiscal method of its compliance, any costs of compliance shifted by the state to local governments will be subject to subvention.[133]

In both *City of Sacramento v. State* and *County of Los Angeles v. State* (referred to by the court in *Sacramento*), suits for reimbursement for costs imposed on local agencies by laws requiring the provision of unemployment benefits to governmental employees failed.[134] The California Supreme Court found that no *"service to the public"* was involved and that, because private employers were required to provide similar benefits, the laws were generally applicable and not an imposition of a state policy *"unique[ly]"* on local governments.[135]

In *Lucia Mar Unified School District v. Honig*,[136] on the other hand, the court held that "by requiring each local school district to contribute part of the expense of educating its handicapped students in state-run schools—a cost previously absorbed entirely by the state—the Legislature created a 'new program' subject to subvention under Article XIII B, section 6."[137] Thus, it appears that state laws directed at local

128. *Id.* at 531.

129. Article XIII B, § 6 was designed "to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities." Lucia Mar Unified Sch. Dist. v. Honig, 750 P.2d 318, 322 (Cal. 1988).

130. *Lucia Mar*, 750 P.2d at 322.

131. *Id.*

132. *Id.*

133. Hayes v. Comm'n on State Mandates, 15 Cal. Rptr. 2d 547, 563-64 (Ct. App. 1992).

134. City of Sacramento v. State, 785 P.2d 522, 530 (Cal. 1990).

135. *Id.* (comparing the court's considerations in County of Los Angeles with those present in City of Sacramento) (citation omitted).

136. 750 P.2d 318, 327 (Cal. 1988).

137. *Id.* at 322.

public entities which have no parallel in the private sector are subject to the reimbursement requirement.

Whether and to what extent a local agency is entitled to reimbursement is initially determined by the Commission on State Mandates.[138] Established by the state legislature in 1985, the Commission consists of the Controller, the Treasurer, the Director of Finance, and the Director of the Office of Planning and Research and a member of the public appointed by the Governor and approved by the Senate.[139] To resolve a local agency claim, the Commission provides a hearing to determine whether the costs incurred by the agency or school district were "mandated by the state," a term defined as follows:

> any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.[140]

Whether the Commission, or a court, should find a mandate also depends on common law considerations, for the term "mandate" also has a judicial definition. According to *Long Beach Unified School District v. State*,[141] since the purpose of XIII B Section 6 was to prevent the transfer of state fiscal responsibility to local governments, the application of its terms must reflect that purpose. The term, "mandate," therefore, means "orders" or "commands."[142] Such concepts as orders and commands necessarily include executive orders. According to *Long Beach*, then, executive orders, as well as statutes, are subject to reimbursement.[143] Whatever its basis of decision, should the Commission find a reimbursable mandate, it must report its findings to the Legislature, which may act to appropriate the estimated costs of the man-

138. CAL. GOV'T CODE, § 17525 (West 1993).

139. *Id.*

140. *Id.* § 17514.

141. 275 Cal. Rptr. 449, 461 (Ct. App. 1990).

142. *Id.*

143. *Id.*

date for purposes of reimbursement.[144] The Commission's decisions are subject to judicial review.

Although school districts have had mandates to increase services in accordance with higher enrollments since a time prior to the promulgation of XIII B, in recent years mandates and orders directing school districts to take particular costly actions have related directly, though not explicitly, to costs imposed on districts by the consequences of immigration.

Just one example was the order requiring all secondary school teachers in the Los Angeles Unified School District to undergo special training to address the district's deficiency in educating students who speak little or no English.[145] The order was issued to force the district to fulfill the requirements of a master plan adopted in 1988, which, according to the school board president, had not been met due to financial crises.[146] To enforce the order, state education officials threatened to withhold funds necessary for bilingual education programs from the school district.[147] To comply, the district would send high school and middle school students home for four days, during which time the teachers would receive the mandated training.[148] The costs of the training and the four-day extension of the school year might be recoverable under this comment's proposed remedy.

III. STATEMENT OF THE LEGAL PROBLEM

As the preceding material suggests, certain California school districts face a legal predicament occasioned, at least in part, by large influxes of immigrant children absent adequate influxes of capital.[149] The outer contours of that predicament are delineated by federal and state mandates.[150] By prohibiting states which afford resident children a basic education from depriving any of those children an education on the basis of the child's legal status under United States immigration laws, the federal mandate limits the legal options a state government may take to avert the economic

144. CAL. GOV'T CODE, § 17500-751.1.

145. Stephanie Brommer, *L.A. Expands Bilingual Program*, SAN JOSE MERCURY NEWS, Jan. 9, 1994, at B3.

146. *Id.*

147. *Id.*

148. *Id.*

149. *See* discussion *supra* part II.B.

150. *See* discussion *supra* parts II.B, II.C.

costs of educating immigrant children. Fundamentally, while *San Antonio* limits the availability of a federal remedy to impoverished school districts, *Plyler* reinforces the direct responsibility state governments, such as California's, hold over local school districts because a state, under *Plyler*, may not permit a school district to limit new enrollments by reference to immigration laws. Thus, a school district receiving inadequate funding necessarily would look to state government, or to local revenue, for a remedy. Because California's electoral propositions limited school districts' ability to raise revenue and imposed the reimbursement requirement upon the Legislature, it appears that school districts have little choice but to turn to the State.

In the context of federal and state constitutional mandates, examination of the evolution of California's school financing formulae, as well as the consequent material circumstances of school districts, raises questions concerning the validity of the legal relationships existing between the Legislature and local school districts. Moreover, regardless of the facial constitutionality of California's current financing scheme, the manner in which that scheme is executed may violate state constitutional provisions.[151] To place those

151. Certain sections of the California Constitution impose duties on the Legislature with regard to education, among them are:
(1) CAL. CONST. art IX, § 1: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement."
(2) CAL. CONST. art. IX, § 5: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."
(3) CAL. CONST. art. XVI, § 8: "From all state revenues there shall first be set apart the monies to be applied by the state for support of the public school system and public institutions of higher education."

With regard to a California state equal protection claim, the California Supreme Court, in addition to overturning the existing school financing system, stated:

> Although an equal expenditure level per pupil in every district is not educationally sound or desirable because of differing educational needs, equality of educational opportunity requires that all school districts possess an equal ability in terms of revenue to provide students with substantially equal opportunities for learning. The system before the court fails in this respect, for it gives high-wealth districts a substantial advantage in obtaining higher quality staff, program expansion and variety, beneficial teacher-pupil ratios and class sizes, modern equipment and materials, and high quality buildings.

questions before the court, then, school districts must ask whether the California Legislature has affirmatively shifted fiscal responsibility for the costs of educating immigrant children to local districts in violation of state education and equal protection mandates; and, if so, what remedies are available to an injured school district.

IV. ANALYSIS

A. *The Criteria for Reimbursement*

The California Supreme Court, in *City of Sacramento v. State*,[152] reiterated the criteria set forth under *County of Los Angeles v. State*,[153] by which a governmental entity may be found to be entitled to reimbursement under Article XIII B.[154] According to *City of Sacramento*, subvention is required

> *only* when the state compels local governments to provide new or upgraded "programs that carry out the governmental function of providing *services to the public*, or, . . . to implement a state policy, *impose[s] unique* requirements on local governments [that] do not apply generally to all residents and entities of the state."[155]

Whether or not a local government's costs were the result of a "new program" or "increased level of service" within the meaning of XIII B could be determined by reference to the intent of the electorate in passing Proposition 4.[156] The court reasoned that the voters had not intended that all local costs resulting from compliance with state law be reimbursable; but rather had intended to forestall attempts by the Legislature to "enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public."[157] As will be discussed below, Article XIII B reimbursement analysis encompasses not only the plain language of the provision but the purpose of its adoption.

Serrano v. Priest (Serrano II), 557 P.2d 929, 939 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977).

152. 785 P.2d 522 (Cal. 1990).

153. 729 P.2d 202 (Cal. 1987).

154. *City of Sacramento*, 785 P.2d at 522, 526, 529-30 (footnotes omitted).

155. *Id.* at 526 (footnote omitted).

156. *Id.* at 530.

157. City of Sacramento v. State, 785 P.2d 522, 530 (Cal. 1990) (footnote omitted).

B. *Application of the Criteria*

1. *Specific Mandates*

With regard to particularized mandates, such as the order issued to the Los Angeles School District mentioned above,[158] the elements of Article XIII B, section 6 appear relatively easy to meet. The order can be considered a mandate because, according to *Long Beach Unified School District v. State*, the concept of the term "mandate," for the purposes of Article XIII B, includes executive orders as well as statutes.[159] In defining "mandate," the purpose of Article XIII B's adoption, rather than the form of an order, is controlling.[160] The order that teachers undergo new training—in foreign cultures, and methods and strategies of teaching limited-English students—arguably constitutes a "new or upgraded" program of providing services (i.e. teaching) to the public. Certainly the order is unique to local governmental entities.

The significance of reimbursement for particularized mandates, however, truly lies with relatively minor aspects of the operation of a public school system.[161] Further, singular claims such as the example given above might not be subject to strict judicial oversight because the claim may not indicate the relevance of the wealth-related funding disparities with which a district must cope.

2. *General Mandates*

The circumstances faced by school districts serving large numbers of immigrant children are similar to those faced by the school district plaintiff in *Lucia Mar*.[162] Although a mandate to serve such children has existed for many years, the increased limitation on the availability of means to pay for the service is recent, as the diversion of local taxes to complement state funds in order to match, rather than increase, past budgets began in 1992.[163]

158. *See supra* text accompanying notes 142-45.

159. Long Beach Unified Sch. Dist. v. State, 275 Cal. Rptr. 449, 461 (Ct. App. 1990).

160. *Id.*

161. This is demonstrated by the fact that the true costs of educating immigrants concentrated in particular school districts are not accounted for by equalized per-pupil funding formulae. In comparison, disparities resulting from individual orders are minimal. *See* discussion *supra* part II.A.

162. Lucia Mar Unified Sch. Dist. v. Honig, 750 P.2d 318, 320 (Cal. 1988).

163. *See* SHIRES et al., *supra* note 12, at 63.

It appears that such new financial obstacles, combined with pre-existing state-mandated programs, constitute "higher level[s] of service" which school districts are compelled to provide. Logically, this is true inasmuch as school districts which must educate higher numbers of students without commensurate financial support, in effect, must provide an increased level of service. The Supreme Court of California has recognized this logic by defining the term "higher level of service" as "state mandated increases in the services provided by local agencies in existing 'programs.' "[164]

While some may argue that the state funding scheme, which equalizes district funding by allocating resources according to units of average daily attendance and provides certain categorical aid to districts based on other factors,[165] accounts for influxes of new students, the circumstances of districts containing high concentrations of immigrants indicate otherwise. As previously discussed, new students require new teachers, new programs, and larger facilities—requirements only partially funded by the state's financing scheme.[166]

According to California common law, it is clear that the public intended that the fiscal responsibility for providing these services reside at the state, rather than local, level.[167] Although only one of the following elements must be met, it

164. County of Los Angeles v. State, 729 P.2d 202, 208 (Cal. 1987).

165. Butt v. State, 842 P.2d 1240, 1247 n.11 (Cal. 1992).

166. This fact was explicitly recognized in Proposition 98, which reads in part: "The People of the State and California find and declare that: (a) California schools are the fastest growing in the nation . . . . (b) Classes in California's schools have become so seriously overcrowded that California now has the largest classes of any state in the nation." Proposition 98, § 2.

167. "Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all." *Butt*, 842 P.2d at 1247. To reach this conclusion, the California Supreme Court cited the following: "The education of the children of the state is an obligation which the state is an obligation which the state took over to itself by the adoption of the Constitution." San Francisco Unified Sch. Dist. v. Johnson, 479 P.2d 669, 677 (Cal. 1971), *cert. denied*, 401 U.S. 1012 (1971) (*quoting* Piper v. Big Pine Sch. Dist., 226 P. 926, 928 (Cal. 1924)); "School districts are the agencies of the state for local operation of the state school system." Hall v. City of Taft, 302 P.2d 574, 577 (Cal. 1956); "[T]he State's ultimate responsibility for public education cannot be delegated to any other entity." *Id.* at 577. "[A] system of common schools means one system, which shall be applicable to all the common schools within the state." Kennedy v. Miller, 32 P. 558, 559 (Cal. 1893); "[M]anagement and control of the public schools [is] a matter of state care and supervision." *Id.* at 558.

appears that the costs of educating immigrant children involve both the provision of services to the public and the imposition of unique requirements on local governments. Disparity in educational opportunity, a service, has been the source of successful constitutional claims against the state.[168] Furthermore, the requirement of accepting immigrant children is unique to school districts, self-evidently not incidental to any generally applicable law.

In *City of Sacramento*, the court distinguished *Lucia Mar*,[169] reasoning, that in *Lucia Mar*, the "education of handicapped students was clearly a traditional governmental 'service to the public,' " and it qualified as a "program" on that basis.[170] According to the *City of Sacramento* court, the function of educating handicapped children "had long been performed by the state, and the only issue was whether the belated shifting of the program's costs to local governments made it 'new' for subvention purposes."[171] To resolve the issue in the negative, the court stated, would undermine a central purpose of Article XIII B, section 6: preventing the transfer of the cost of government from the state to local agencies.[172]

No similar distinctions can be drawn with regard to the education of immigrant children. Perhaps the most forceful distinction that can be drawn relates to the manner in which local districts have been deprived of supplemental means to raise revenue. Local property taxes were appropriated by the State and added to the education fund;[173] thus, the deprivation of means was indirect—an additional reduction in the ability of a district to raise revenue for local purposes. In *Lucia Mar*, the state statute explicitly required a diversion of district funds to the State for the purposes of educating children.[174] Such a distinction should not apply against poor districts faced with a state mandate to provide an education to

168. *See Butt*, 842 P.2d at 1251; Serrano v. Priest (Serrano II), 557 P.2d 929, 959 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977) (Richardson, dissenting).

169. City of Sacramento v. State, 785 P.2d 522, 531 (Cal. 1990).

170. *Id.*

171. *Id.*

172. *Id.*

173. SHIRES et al., *supra* note 12, at 63.

174. Lucia Mar Unified Sch. Dist. v. Honig, 750 P.2d 318, 320 (Cal. 1988).

large numbers of immigrant children, for it would undermine the purposes of XIII B, section 6.[175]

C. *The Application of Equal Protection Criteria*

State equal protection principles provide additional reasons why overburdened school districts should be entitled to reimbursement.[176] In the context of the equalized funding formulae, enacted after *Serrano* effectively condemned local taxation as the primary source of district revenue, one equal protection argument asserts that locally derived revenues are "essential revenues disguised as supplements."[177] In other words, the reasoning of *Serrano* should apply because wealth-based funding disparities exist despite the State's allocation of funds on an equalized per student basis.

The factual basis of the *Serrano* decision included a statewide financing scheme which relied on locally set ad valorem levies.[178] State funding support was conditioned on the district taxing itself at a certain minimum, prescribed rate per amount of assessed property value.[179] If a district met the prescribed level, it was guaranteed equalized funding per student, regardless of its ability to raise revenue.[180] Any additional school district expenditures required additional local levies;[181] thus, a direct relationship could be established between a local district's capability to offer its residents educational opportunity and the taxable wealth of the district.

No such direct relationship between district wealth and educational opportunity can be shown under the current state financing scheme. A plaintiff under today's financing scheme, however, can point to wealth-related funding dispar-

175. Analogously, according to a court decision construing "mandate" to mean "orders" and "commands" as well as statutes: "It is clear that the primary concern of the voters was the increased financial burdens being shifted to local government, not the form in which those burdens appeared." Long Beach Unified Sch. Dist. v. State, 275 Cal. Rptr. 449, 464 (Ct. App. 1990).

176. "It . . . appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts." Butt v. State, 842 P.2d 1240, 1251 (Cal. 1992).

177. Henke, *supra* note 106, at 36.

178. *Id.*

179. *Id.*

180. *See id.*

181. *See id.* at 36-37.

ities resulting from the supplemental funding scheme[182] and the centralized funding per student formulae.

According to one scholar, the "essence of *Serrano* is that districts should have equal ability per student to raise revenue."[183] Arguably, *Serrano* is violated by district funding levels so low that supplemental revenues are essential for school districts to provide children with a basic education. When poor districts are unable to obtain sufficient supplemental income, the fact that school districts in affluent areas can provide their students with substantially greater educational opportunity calls into question the constitutionality of the financing scheme. The fact that the opportunity results from, for instance, parcel taxes in an affluent residential district rather than an ad valorem tax is an unconvincing distinction. As discussed above, substantial inequities currently exist between school districts' ability to perform the same designated functions. For example, the previous comparison between the Los Gatos School District and neighboring Bay Area districts reveals easily quantifiable disparities in the allocation of educational services.[184]

Moreover, the *Serrano* decision may have foreseen, and provided for, the kind of quantitative differences among the school districts in ability to provide educational opportunity for residents which today exist in California as a result of disparate supplemental revenue sources.[185] According to the language of *Serrano:*

> [I]t can be expected that future years will see an increase statewide in the ratio of local supplements to other revenues. In such circumstances, the extent of an individual district's participation in the statewide increase will be geared to its taxable wealth. To ask, as defendants do, that we defer our notice of such probable future disparities to the time of their actual occurrence is to ask that we ignore inherent defects in the system which we are called upon to examine.[186]

While the scope of the above language is left undefined, it would be useful to a plaintiff petitioning a California court for

182. *See id.* at 36.

183. *Id.*

184. *See supra* text accompanying notes 43-51.

185. *See* Henke, *supra* note 106, at 35.

186. Serrano v. Priest (Serrano II), 557 P.2d 929, 945 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977).

review of the role of supplemental revenue in statewide financing because it implicitly indicates that other, future legislative decisions to fund California schools would be subject to an equally strict scrutiny.

On the other hand, there is a powerful qualitative difference between the pre-*Serrano* and the post-*Serrano* financing schemes.[187] Prior to *Serrano*, the statewide financing formulae relied primarily on district funding; today, all districts rely primarily on state financing.[188] Were a court to find *Serrano* to be predicated on that basic reliance, "it might conclude that any locally raised revenue would be truly supplemental,"[189] and therefore constitutionally justified.

Further, the addition of Proposition 13 to the California Constitution set forth requirements not presented before the California Supreme Court in its *Serrano* decision. Proposition 13 fundamentally limited the range of choices available to the Legislature for fulfilling the apparent requirements set forth in *Serrano*. Indeed, the Legislature, following the *Serrano* decision, had enacted a true "power equalizing" system whereby local property tax revenue was to be redistributed from tax-rich to tax-poor districts.[190] That enactment was mooted with the passage of Proposition 13, and California subsequently adopted fully centralized funding.[191] The adoption of centralized funding thus occurred under legal circumstances more constraining to the Legislature's broad discretion[192] than existed at the time of *Serrano*.

Any discourse on the qualitative differences between the education financing schemes, however, would necessarily include a question concerning the meaning of the language of *Serrano* cited above in the statement of the legal problem. Specifically, the issue raised is whether today's financing formulae are unconstitutionally analogous to the following language: "an equal expenditure level per pupil in every district is not educationally sound or desirable because of differing

187. Henke, *supra* note 106, at 36.

188. *Id.* at 37; *see* CAL. EDUC. CODE § 42238 (West Supp. 1993).

189. Henke, *supra* note 106, at 37.

190. *Id.* at 39.

191. *Id.*

192. "[U]nder the [California] Constitution the Legislature is given broad discretion in determining the types of programs and services which further the purposes of education." California Teachers Ass'n v. Huff, 7 Cal. Rptr. 2d, 699, 708 (Ct. App. 1992) (footnote omitted).

needs."[193] Since the funding formulae arguably take inadequate account of the differing needs of districts,[194] the formulae on these grounds alone may not meet *Serrano* standards, for they might not afford "an equal ability in terms of revenue to provide students with substantially equal opportunity."[195]

The differing needs in the case at hand are the result of annually increasing student enrollments which are themselves the result of high concentrations of immigrants in particular school districts. With relatively large immigrant populations settling in urban areas, and with thirty percent of the children in central cities living below the poverty line,[196] wealth-related inequities in the centralized formulae can be established by inference. Assuming that substantial wealth-related inequities can be shown factually by a district plaintiff, the scope and viability of *Serrano*'s essential holding necessarily will be addressed.

As discussed above, California courts have upheld and even extended the central holding of *Serrano*.[197] *Butt*, for instance, explained that the State's affirmative duty to intervene to correct "basic 'interdistrict' disparities" exists regardless of whether disparate results were intended by the State or its agents.[198] Thus, where local district officials mismanage district affairs to the extent that students' fundamental interest in educational equality may be infringed upon, the State, rather than the students, must bear the burden imposed by the irresponsible actor.

This line of reasoning is especially helpful to school districts interested in asserting fact-based petitions for reimbursement. Because local control of public schools is not a compelling interest, and the State had shown no compelling interest, the *Butt* trial court lawfully ordered the State and

193. Serrano v. Priest (Serrano II), 557 P.2d 929, 939 (Cal. 1976), *cert. denied sub nom.* Clowes v. Serrano, 432 U.S. 907 (1977).

194. Of course the facts which show the formulae that takes inadequate account of a school district's differing needs would depend on a showing of the district's needs as against whatever categorical aid the district received. Categorical aid is the Legislature's method of accounting for the differing needs of districts based on the diversity of student population. Butt v. State, 842 P.2d 1240, 1247 n.11 (Cal. 1992).

195. *Serrano II*, 557 P.2d at 939.

196. ROTBERG, *supra* note 8, at 7.

197. *See* discussion *supra* II.C.1.

198. *Butt*, 842 P.2d at 1249.

its officials to protect students' rights.[199] The trial court also constructed a lawful remedy for the district by authorizing the Superintendent of Public Instruction to assume control of the school district's affairs.[200] While *Serrano* had involved a constitutional challenge to the state public school financing system, *Serrano*'s progeny now involve the application of the constitutional principles the decision set forth in formulating viable remedies. Similarly, *Serrano* should require strict judicial oversight of a school district's claim for reimbursement for state-mandated programs.

V. PROPOSAL

The language of Article XIII B requires the state Legislature to reimburse local governmental entities for costs attributable to state-mandated new programs or increased levels of service. As discussed previously, certain school districts affected by high enrollments of immigrants have had to upgrade levels of service by providing more classrooms, more bilingual programs, and more teachers to achieve prescribed educational standards.[201] While California has required affected school districts to provide certain services, the State has not afforded districts funds commensurate with the costs of complying with its mandates. One possible solution is to show that additional costs incurred by local districts in their compliance with a mandate to educate immigrant children constitutes a "new program" or higher "level of service" for which the district must be reimbursed.

As a means to enforce the Legislature's fulfillment of its constitutional duties, this comment proposes that local school districts file claims for reimbursement under Article XIII B, contending that the Legislature's discretion in fulfilling its obligations to school districts is subject to strict judicial review according to state equal protection principles. Reimbursement should be afforded to districts where particular costs have been incurred as a result of specific mandates, and where "unique obligations" have been incurred by local districts in compliance with general mandates.

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199. Butt v. State, 842 P.2d 1240, 1264 (Cal. 1992).

200. *Id.*

201. *See* MCDONNELL & HILL, *supra* note 2, at xi-xiv.

VI. SUMMATION

To the extent that the public policy issues of immigration and education can be resolved by the enforcement of existing law, those issues are legal rather than political. This comment analyzes some of those issues by examining the federal and state constitutional mandates which frame any potential resolution to the apparent conflict between the requirements imposed on all California schools and the means allocated to certain schools to achieve those requirements.

In particular, the comment examines, in the context of the federal mandates, California constitutional mandates which grant resident children a right to a basic education and prohibit the allocation of educational opportunity on the basis of district wealth.[202] It reviews the evolution of California constitutional and statutory law pertaining to the financing of public education, and describes the revenue-raising authority invested in particular governmental entities.[203]

The comment sets forth applicable criteria for analyzing the problem of reimbursement and proposes a remedy by which school districts might recover costs incurred by complying with state mandates.[204] The remedy invokes California constitutional principles which require strict judicial scrutiny of a claim, without necessarily challenging any statutory scheme as unconstitutional. Since the California Supreme Court has recently upheld the long-standing principles upon which the proposed claim is based, the comment concludes that a fact-laden claim would probably be successful.

Whatever societal values education may enhance, the perception of the unique value of education is reflected in the law. If it is true that "our progress as a nation can be no swifter than our progress in education,"[205] then any judicial failure to enforce state education rights may potentially harm the progress of the nation. No California court need abdicate

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202. *See supra* text accompanying notes 96-100.

203. *See* discussion *supra* part II.C.

204. *See* discussion *supra* parts III.C., V.

205. Quoting President John F. Kennedy, in THEODORE C. SORENSEN, KENNEDY 358 (1965).

its responsibility in light of the mandates the judiciary is required to enforce.

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